

EX PARTE OR LATE FILED

October 20, 1996

Secretary, Federal Communication Commission  
1919 M St. NW  
Washington, D.C. 20554

RECEIVED

NOV 8 1996

Re: CS Docket No. 96-83

FCC MAIL ROOM

Dear Secretary;

My name is Shane K. Churchill and my fiancé name is Tabi S. Parks. We live at Southwicke Townhome Association located at 4400 E.P. True Parkway, Unit # 11, West Des Moines, Iowa 50265. We can be reached at many different numbers. My cell phone: (515) 240-8371, my fiancé cell phone: (515) 490-4555, our home: (515) 226-0757, our work: (515) 223-5400 ext 220 or 206, our fax: (515) 223-5441, or e-mail: skc@concentric.net. Our Association's President is Bob Levisay and he can be reached during the day from 7:30 a.m. until 4:00 p.m. at (515) 274-1561 or at night (515) 221-1381.

I've spoken to one of your customer service representatives about our Townhome Association enforcing what we think is an invalid restriction in regards to 18" satellite dishes. Enclosed is my original and two copies of my petition and pleadings. Here's my case;

On September 9, 1995, we purchased and installed our 18" satellite dish on the south side of our Townhome. Not until March 7, 1996, (approx. 6 months later) did our Association President ask us to remove the satellite dish (Exhibit # 1) because the Association's "Declaration of Covenants" states on page 28, Article XIII, Section 7 - "No television or radio antennae shall be placed upon the exterior of a Lot or Living Unit." (Exhibit # 2) At this time, our Association President, informed us, if we could find another Association which had already amended their Covenants to restrict large satellite dishes but allow 18" satellite dishes but restrict Townhome owners from placing them on the front of their units he would ask the Board of Directors to amend our Townhome Association's Covenants.

So, on April 14, 1996, I started to call approximately 7 - 9 other Townhome Associations in West Des Moines and had no luck. Basically, each Association stated, "they knew homeowners had installed dishes and their covenants didn't allow them but they weren't going to enforce it because they didn't see it as a problem." So I wrote a letter asking for help from our Realtor that sold us our Townhome. (Exhibit # 3) He couldn't do anything for us except ask their corporate attorney to look over our Covenants and give his opinion, which is included in a letter dated April 24, 1996. (Exhibit # 4)

I heard no response from the Association. I then removed the dish from the side of our Townhome and placed it on a 2" x 6" board and set it on our deck (which according to our "Declaration of Covenants" on page 2, Article I, Section 2, subsection (a) reads; "Association Responsibility Elements" shall mean the following; "The exterior surface of the Building upon a lot, excluding windows, doors, patios and decks.") (Exhibit # 5) We read this to mean, we own our deck and can place items upon it like our grill, patio furniture, planters etc. Also, during this period my fiancé attended a monthly Board meeting and requested a survey be sent to all Association members to see if they had an opinion about homeowners installing satellite dishes. At this meeting the Board was split on amending the covenants to allow satellite dishes. So they agreed to send out the surveys. They came back with results as follows;

52.5% said "don't change the covenants"  
38.9% said "change the covenants but with restrictions"  
8.6% said "change the covenants"

No. of Copies rec'd

012

The Association President met with my fiancé after these results came in and informed us we had lost the survey process. When asked how the Board voted, she was informed, two of the members voted not to change the covenants. Which after calculating the number of participants, this explained the 52.5% voting not to change the covenants. If these two members had voted with their original thoughts we would've won and they would've had to amend the covenants. It was very interesting how the other Board members influenced this process.

Then on June 12, 1996, (approx. 3 months later) our Association President asked us again to remove our satellite dish. (Exhibit # 6) I then called USSB and DirecTV satellite communication dealers for help and they informed me "they get calls every day from customers asking what to do about Townhome Associations, Landlords at Apartments and Condos." They said "if the main issue is because the satellite dish is an eye sore you can purchase an artificial rock to place over your satellite dish and still receive a signal." So we did nothing and waiting again for our Association to do something.

Then on July 5, 1996, (approx. 1 month later) we received a 10-day right to cure letter from our Association. (Exhibit # 7) We responded by sending a letter, dated July 8, 1996, (exhibit # 8) to our Association President informing him we would remove it. But, after receiving this FCC ruling from one of our neighbors we didn't remove the dish. Instead we purchased the artificial rock and placed our satellite dish beside our deck on our rock landscaping. Once again we thought the issue would drop.

Then on October 13, 1996, (approx. 3 months later) we received a visit from all five Board members at our door. (Exhibit # 9) They informed us we needed to remove our satellite dish from under our artificial rock and they were giving us 10 days to do so. They asked us to sign an agreement of this and we refused to do so.

Then we made a call to your office asking for help and the customer service representative said we could file a "Declaratory Rule" and a field representative would be assigned to this issue and help us resolve it. So, I sent a letter to our Association President (exhibit # 10) asking for a contact person and a daytime phone number of someone the FCC could talk to. He replied (exhibit # 11) saying he would cooperate but he was correct in enforcing this issue and he expects us to remove our satellite dish by the 23rd of October or he is going to file an injunction to have it removed. He enclosed his two exhibits which give him the power to enforce this issue. (Exhibit # 11)

I see our case to be easy to resolve. I know the "Report and Order" and other materials I've collected from various people and institutions on the Internet keep skating around the issue of Townhome Associations. I've asked if this "Report and Order" deals with Townhome Associations and I get the same answer every time, "depends on what part of the unit you own." So I point out the "*Declaration of Covenants*" on page 2, Article I, Section 2, subsection (a) "*Association Responsibility Elements*" shall mean the following; "*The exterior surface of the Building upon a lot, excluding windows, doors, patios and decks*". (Exhibit # 5) Do you interpret this section the same way I do? Which is, if I place the satellite dish on my deck, then I can have it. The Covenants say I own this piece of property. I've enclosed the entire "Declaration of Covenants" for your review.

Has the FCC made a final decision on amending this rule to include Townhome Associations? If not, can you let me know what the FCC thoughts are on this issue, or which way the FCC is leaning towards? If at all possible could someone call me and let me know what kind of time frame your office works under with issues like this one. I've been trying to resolve this issue with our Association President without any legal action so I'm very interested in your time frame. I look forward to hearing from you soon.



## *Southwicke Townhomes Association*

4400 E. P. True Parkway, #1

West Des Moines, IA 50265

March 9, 1996

Mr. Shane Churchill & Ms. Tabi Parks  
4400 E. P. True Parkway #11  
West Des Moines, IA 50265

Dear Shane and Tabi:

Pursuant to our telephone conversation of Thursday evening, I am confirming to you the Board of Director's request to immediately remove the satellite dishes that you have installed without board approval. Please understand that the exterior of each unit belongs to the association, and all modifications of any kind must receive board approval before the modification is started.

Upon removal of this dish, please notify me in writing so that I may come down and inspect the exterior of the unit.

Thank you for your prompt response to this request.

Sincerely,

Robert Levisay  
President

CC/RRR

under or through other Owners.

Section 4. The Owner of each Lot shall keep the same free of weeds and debris.

Section 5. No trash receptacles and garbage cans shall be permitted to be placed outside of a building or a structure on any Lot unless hidden by an attractive screen of suitable height, or unless sunken to ground level in a hole lined with permanent cribbing. This restriction shall not preclude the placement of waste containers outside of such area on a temporary basis if so required by governmental regulation.

Section 6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 7. No television or radio antennae shall be placed upon the exterior of a Lot or Living Unit.

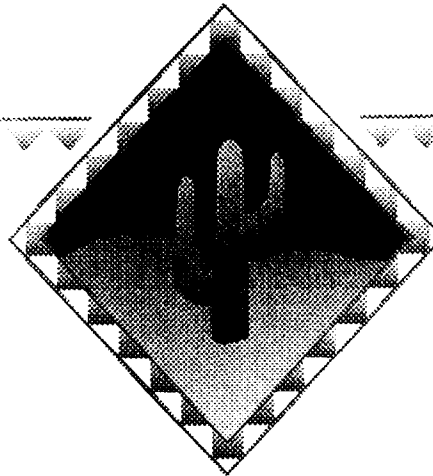
\* Section 8. No basketball goal (whether attached to the exterior of a Living Unit or affixed to a free-standing pole), soccer goal, baseball backstop, or other similar sporting equipment shall be constructed upon any Lot.

Section 9. All unattached sporting equipment, toys, outdoor cooking equipment, and other equipment and supplies necessary or convenient to residential living shall be stored on the patio or deck of the Living Unit. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious weed or other noxious substance, and the harboring of the source of any noise or activity which

Shane K. Churchill  
Tabi S. Parks

4400 E.P. True Parkway, Unit # 11  
West Des Moines, Iowa 50265

Home (515) 226-0757  
Shane's Cellular (515) 240-8371  
Tabi's Cellular (515) 490-4555



To: Garry W. Gloschen  
Company: Iowa Reality

Fax: (515) 244-1170  
Phone: (515) 244-1060

From: Shane K. Churchill

Fax: (515) 223-5441  
Phone: (515) 223-5400 ext 204

Re: Townhome Association and my 18" Satellite Dish

Pages: 1 including this cover page

Garry, I'm having a problem with our new Townhome Association President, I wondered if you could help me. Last year in September, Tabi and I bought these new 18" satellite dishes from Sony, had it installed on the back side of our house. Well, last night the Association asked me to take it down. We went around and around about how small the dish was, the color of the dish matching the house, it being installed on the back of our Townhome where no one walks, and not to mention that it has been up for 8 months and no one has seen it, so obviously it isn't an eye sore. He went on to point out these satellites have to point towards the south at all times, and people with no southern exposure or people with the southern exposure only in the front of their unit couldn't install one because it would be an eye sore.

To try to make a long story short, we finally came down to if I could find another Townhome Association's covenants which stated some kind of language about satellite dishes then he would be willing to approach the board and make a change so we could keep the dish. This is where you can help or direct me, can you obtain covenants for various Associations around the West Des Moines area? or is there a list of townhomes? I'm not sure how to find out the President of each Association, in order to ask them if they allow satellite dishes or are they have this problem also. Can you direct me or help me out with this little problem? If you would call me at work and we can discuss it I would greatly appreciate it.

Thanks,

Shane

Shane K. Churchill  
Tabi S. Parks  
4400 E.P. True Parkway, Unit # 11  
West Des Moines, Iowa 50265  
(515) 226-0757

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To: Southwicke Townhome Association  
From: Shane K. Churchill  
Date: April 24, 1996  
Re: 18" Satellite Dish, Insurance, Rock around our Deck

#### **18" Satellite Dish**

I have tried to speak with many West Des Moines Townhome associations. They were reluctant to give me their covenants because I wasn't a home owner in their association. So, I had one of my Realtor friends call and get their rules on satellite dishes. The response he got from everyone was they have home owners that have dishes installed, but their covenants don't allow them, but they're not currently enforcing them because the association is trying to write new rules for the smaller 18" dishes. The Realtor's statements were everyone is waiting on someone else to write these amended covenants. So he suggested that I send our associations covenants to Iowa Realty's corporate attorney. I did and they suggested that Southwicke Townhome Association could take three different approaches; 1) we could write the covenants stating all satellite dishes have to be 18" or smaller, 2) offer a waiver or grant individual permission to those who want satellite dishes, 3) use normal procedure & nature process and obtain Board approval. They thought this could be an easy solution and not be offensive to anyone because not everything an associations offers is equally available to all tenants. Each unit is subject to its layout and location within the complex.

#### **Insurance**

I received a letter from our Mortgage Company (AmerUs), according to their records the proof of insurance information they have about Southwicke Townhome Association expired 01/01/96. They are asking for a new proof of the Condo Association Blanket Policy. They want a copy of the Mortgage Declaration Page. If you can provide me with this I would greatly appreciate it.

#### **Rock Around our Deck**

I have attached a drawing of the back yard around our deck. As you'll see I want to add red rock, like what is around the front of our house, around the deck, window well and air conditioner. Can you let me know if you have any problems with this as I would like to get started as soon as possible.

#### **Misc.**

I read in this months newsletter that the association was filling in top soil and planting grass seed behind the units to the west of us. Is there any plans to do anything with the ground that is bald behind the set of units we live in ?

I look forward to hearing from you in the immediate future.

Shane K. Churchill & Tabi S. Parks

Section 2. "Association Responsibility Elements" shall mean the following:

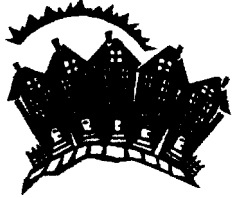
- (a) The exterior surface of the Building upon a Lot, excluding windows, doors, patios and decks.
- (b) The structural portion of the Building upon a Lot.
- (c) The roof, gutters, downspouts, and foundations of the Building upon a Lot.
- (d) Any common wall between residential structures upon Lots, except the interior surfaces thereof.
- (e) The yard surrounding the residential structure upon a Lot.
- (f) Driveways and sidewalks.
- (g) Conduits, ducts, plumbing, wiring, pipes and other facilities within the attic or basement of a residential structure which are carrying any service to more than one Lot.

Section 3. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to any structure containing one or more single-family dwelling units that may be constructed on a Lot or on several Lots.

Section 5. "Common Elements" shall mean all common water lines, sewers, gas lines, electric lines and other utility service facilities located within the properties that serve more than one Living Unit.

Section 6. "Declarant" shall mean and refer to Southwicke TownHomes, Inc., its successors and assigns.



## *Southwicke Townhomes Association*

4400 E. P. True Parkway, #1

West Des Moines, IA 50265

June 22, 1996

Mr. Shane Churchill & Ms. Tabi Parks  
4400 E. P. True Parkway #11  
West Des Moines, IA 50265

Dear Shane and Tabi:

Pursuant to our conversation of Wednesday evening, June 12th, I am confirming to you the Board of Director's request to remove the satellite dish that you installed without board approval. You requested seven days to make arrangements for cable service and said that you would get back to me at the end of those seven days. I have not heard from you and saw the satellite dish still on your deck this morning.

I would also request the copy of the FAA information I left with you. If you would like, I have no problem with you taking a copy to keep.

Please confirm in writing that you have removed the satellite dish permanently.

Thank you for your prompt response to this request.

Sincerely,

Robert Levisay  
President



## *Southwicke Townhomes Association*

4400 E. P. True Parkway, #1

West Des Moines, IA 50265

July 5, 1996

Mr. Shane Churchill & Ms. Tabi Parks  
4400 E. P. True Parkway #11  
West Des Moines, IA 50265

RE: 10 Day Right to Cure Violation of Southwicke Townhomes Association Covenants

Dear Shane and Tabi:

This is your third notice that we expect to have your satellite dish removed permanently, as long as the current restrictions prohibit the installation of all antennas, including satellite dishes.

All previous communications remain unanswered as of this time and the satellite dish was observed on your deck the afternoon of July 4th.

Please refer to page 31, Article XIV, Section 1. Should you choose not to confirm in writing to us that the satellite dish has been removed within ten days of receiving this memo, the association will use appropriate means available to them to enforce the covenants, the cost of which will be assessed to your unit.

We sincerely regret that it has come to this, but the other satellite dish has been removed and we feel it is only fair to insure that your dish is also removed.

Sincerely,

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Bob Levisay, President and Director

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Lou Koppold, Treasurer and Director

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Bill Warrick, Vice President and Director

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Katy May, Secretary and Director

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Frank Koppold, Director

~~Exhibit 1~~

July 8, 1996

Mr. Robert Levisay  
Southwicke Townhomes Association  
4400 E.P. True Parkway, Unit # 30  
West Des Moines, Iowa 50266

Dear Bob,

In response to your letter dated June 22, 1996 our 18" satellite dish will be removed by this weekend, Sunday, July 14, 1996.

Since we're doing what we said we would do. Will the Association do what they said they would do ? Fix the grass in our backyard ? You stated "we'll fix your backyard as soon as it dries out". It hasn't rained for several days. I noticed sod has been replaced in other places needing repair. The water will never drain from our backyard until the holes are filled in with dirt. This problem will also never go away as long as the mowing crew mows like they do. You need to watch these guys mow our lawn, like I did this past weekend. They sit in our backyard and spin there tractor wheels and tear up the yard. I sat there and watched three people try to teach the person on the riding mower how to go up and down the hill in our back yard. The he road the mower over the back wall behind our unit. I don't think these are qualified people. I don't understand why they don't WALK this back area.

Could you also let me know when the Association is going to correct the drainage from the back hill behind our unit. The chicken wire fencing idea doesn't work. We were told this idea was going to be tried then if it didn't work something else was going to be done. This idea doesn't work and nothing else has been done. I would appreciate being told what the next idea is going to be and when this is going to be implemented. I know your probably going to say it isn't raining, but why do we have to wait until after the next rain when this last rain a couple of weeks ago didn't work. It is washing chemicals and debris into our back yard and if you look at the grass back there its all dead. This effects when and how we can use our back yard and having a pet this is a real inconvenience.

Also according to a conversation we had approximately 3 months ago the Association was going to replace our shrubs in front of our unit so we had the same look as every other unit in the Association. Nothing has been done. Will you please let me know when this will be addressed.

As far as the FAA information I will return those to you as soon as I get a copy made.

I would hope since you've been so adamant about following the covenants and making sure the complex looks good and all units look consistent you'll get these few other items mentioned above taken care of as soon as possible.

Sincerely,  
Shane K. Churchill & Tabi Parks



## Southwicke Townhomes Association

4400 E. P. True Parkway, #1

West Des Moines, IA 50265

October 13, 1996

Mr. Shane Churchill & Ms. Tabi Parks  
4400 E. P. True Parkway #11  
West Des Moines, IA 50265

Dear Shane and Tabi:

It has come to our attention that you have more than likely reinstalled your satellite dish under an artificial rock in your backyard. At this time, the whole board feels very betrayed. We feel that we have bent over backwards to treat you fairly, and felt that your letter announcing that you would remove the satellite dish in July put an end to the whole matter as long as the current restriction are in effect.

A copy of a letter sent July 5, 1996 certified, return receipt, but was never retrieved from the post office by you is attached.

We will be having a board meeting in the next week or two, and if we feel that you have acted contrary to the covenants, will take the appropriate action to insure compliance, the cost of which will be assessed to your unit.

The only way to prevent this action is to issue a declaration in writing to the entire board, before this meeting, stating that you are in compliance and that you will remain in compliance as long as the current restriction is in force.

Please refer to page 31, Article XIV, Section 1. Should you choose not to confirm in writing to us that the satellite dish has been removed within ten days of receiving this memo, the Association will use appropriate means available to them to enforce the covenants, the cost of which will be assessed to your unit.

We sincerely regret that it has come to this, but the other satellite dish has been removed and we feel it is only fair to insure that your dish is also removed.

Sincerely,

Bob Levisay, President and Director

Lou Koppold, Treasurer and Director

Bill Warrick, Vice President and Director

Katy May, Secretary and Director

Frank Koppold, Director

Exhibit # 10

Shane K. Churchill and Tabi S. Parks  
4400 E.P. True Parkway, Unit # 11  
West Des Moines, Iowa 50265  
(515) 226-0757

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To: Bob Levisay, Association President  
Southwicke Townhome Association

From: Shane K. Churchill & Tabi S. Parks

Date: October 16, 1996

Re: CS Docket No. 96-83

Bob, I have received from the Federal Communication Commission (FCC) the "Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking on Restrictions on Over-the-Air Reception Devices" dated August 6, 1996. Then I received from Congressman Greg Ganske's office in Washington, D.C. there understanding of this above mentioned ruling.

The last statement in Congressman Greg Ganske's information is "what to do when I feel my town or association is enforcing an invalid restriction ?" The answer is call the FCC and the direct broadcast satellite companies. So I did. I have spoke with the FCC about the new ruling dealing with Associations banding the installation of satellite dishes. I have read the pertinent sections of our Declaration of Covenants I think pertain to this issue to the FCC office in Washington, D.C. ( Article I Section 2 subsection (a) - page 2 and Article XIII Section 7 - page 28) After reading these two sections to them they informed me that I have a right to file a "Declaratory Rule" with the FCC in Washington, D.C. which would allow the FCC to assign a field office representative to this case. This process allows this office to take what I have presented to them and then call you or whomever then make a public ruling to whether this Association can enforce what you are trying to enforce.

So basically I'm preparing a package for this office. They need to have a contact person with a daytime phone number that will be representing the Southwicke Townhome Association. I'm asking you to provide me with who this person will be. If I do not hear from you by next Thursday, October 24, 1996 I will be including with my filing all Board of Directors name and numbers. You probably don't see any need to cooperate with this process. But, they also informed me since this ruling was passed the proof of burden to enforce this issue is upon the Association. So you or someone will be contacted by the FCC so they can make this decision.

I look forward to hearing from you in the immediate future.

Shane K. Churchill & Tabi S. Parks



## *Southwicke Townhomes Association*

4400 E. P. True Parkway, #1

West Des Moines, IA 50265

October 20, 1996

Mr. Shane Churchill & Ms. Tabi Parks  
4400 E. P. True Parkway #11  
West Des Moines, IA 50265

Dear Shane and Tabi:

We are in receipt of your letter dated October 16, 1997 and have every intention of cooperating with you and the FCC regarding the application of Section 207.

I will be the contact person for Southwicke Townhomes Association. They may reach me at 515-274-1561 from 7:30 a.m. until 4:00 p.m. or at home, 515-221-1381, from approximately 4:20 p.m. to 5:00 p.m. Monday through Friday.

I am enclosing a copy of paragraph 66 of the FCC ruling which is what I will read to the FCC representative when they contact me and a copy of another document that explains that we are not covered by the rulings made thus far by the FCC and therefore have valid covenants to enforce. The board's position at this time is that your dealings with the FCC will not delay what we need to do if the installed satellites are not removed as required by our memo of October 13th. The cost of any action will be accessed to the units involved.

We sincerely hope for your full cooperation.

Sincerely,

Bob Levisay  
President

adoption of a prohibition applicable to restrictions imposed on rental property or property not within the exclusive control of the viewer who has an ownership interest would constitute a taking under *Loretto*, for which just compensation would be required, and if so, what would constitute just compensation in these circumstances.

65. In this regard, we also request comment on how the case of *Bell Atlantic Telephone Companies v. FCC*<sup>190</sup> should affect the constitutional and legal analysis. In that case, the U.S. Court of Appeals for the District of Columbia invalidated Commission orders that permitted competitive access providers to locate their connecting transmission equipment in local exchange carrier' central offices because these orders directly implicated the Just Compensation Clause of the Fifth Amendment. In reaching its decision, the court stated that "[w]ithin the bounds of fair interpretation, statutes will be construed to defeat administrative orders that raise substantial constitutional questions."<sup>191</sup>

## V. CONCLUSION

66. We believe that the rule we adopt today reflects Congress' objective as expressed in Section 207 of the 1996 Act. Our rule furthers the public interest by promoting competition among video programming service providers, enhancing consumer choice, and assuring wide access to communications facilities, without unduly interfering with local interests. We also believe it is appropriate to develop the record further before reaching conclusions regarding the application of Section 207 to situations in which the viewer does not have exclusive use or control and a direct or indirect ownership interest in the property where the antenna is to be installed, used, and maintained.

## VI. PROCEDURAL PROVISIONS

### A. Final Regulatory Flexibility Analysis

67. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *DBS Order and Further Notice* and the *TVBS-MMDS Notice*. The Commission sought written public comments on the proposals in the two proceedings, including comments on the IRFA.<sup>192</sup> The

<sup>190</sup>24 F.3d 1441 (D.C. Cir. 1994).

<sup>191</sup>*Id.* at 1444.

<sup>192</sup>Joint Comments were filed by: National League of Cities; The National Association of Telecommunications Officers and Advisors; The National Trust for Historic Preservation; League of Arizona Cities and Towns; League of California Cities; Colorado Municipal League; Connecticut Conference of Municipalities; Delaware League of Local Governments; Florida League of Cities; Georgia Municipal Association; Association of Idaho Cities; Illinois

**URGENT TELECOMMUNICATIONS UPDATE**

On August 6, the FCC released a rule regarding the preemption of community association restrictions on satellite antennas less than one meter in diameter, off-the-air television antennas, and multipoint distribution service (MDS) antennas less than one meter. This rule applies only to an individual who owns or has exclusive use of the area in which he or she wants to install one or more antennas. Under this rule, association restrictions which prevent, unreasonably delay, unreasonably increase the cost of antenna installation, maintenance or use, or preclude reception of an acceptable quality signal will no longer be enforceable. However, reasonable architectural guidelines which do not impair signal reception will continue to be enforceable. Examples of permissible restrictions include: mandatory painting or screening of antennas and requiring the minimal visual intrusion possible. The rule appears to permit a prompt application process.

In addition, masts to which MDS antennas are to be attached may be prohibited if more than 12 feet above the roofline. Restrictions designed to implement a clearly defined safety objective or maintain the nature of a historic district are exempt from the rule. In exceptional circumstances, an association may petition for a waiver of this rule.

The FCC deferred any decision on restricting individual installation of antennas on common property. Instead, the FCC has asked for additional comments and information concerning these issues, as well as CAI's suggestion that associations could decide to install central antennas to serve those individuals wanting telecommunications services.

CAI has been actively involved in ensuring that these new rules allow associations to maintain some control over location, means, and method of antenna installation while ensuring homeowner access to advanced telecommunications services. CAI volunteers and staff provided written Comments and Reply Comments to the FCC on both proposed rules, held numerous meetings with congressional and FCC senior staff, met and discussed the issues with the FCC staff writing this rule, and responded to countless inquiries from members. CAI supported the public policy goal of making communications services available to all Americans, while simultaneously fighting to preserve the rights of homeowner associations to control location, means and method of antenna installations. Due to intense efforts by many CAI members, the final rule incorporated many of CAI's suggestions.

The rule will not be effective for at least 30 days. In the meantime, please help CAI inform community associations and other interested parties of this new rule. CAI will be working with the FCC in a collaborative effort to provide timely information to its members on effective implementation of this rule. More detailed information (including the FCC rule) can be obtained by visiting CAI's home page on the Internet (address: <http://www.caionline.com>), Community Associations Online (CAO), or CAI's Faxback system at 703-836-6904, #530. A copy of the entire FCC rule, including the report and order, may be obtained from the FCC home page at <http://www.fcc.gov>. If you have any questions, please contact Bob Diamond, CAI President, at 703-641-4273 or Barbara Beach, Becky Vensel or Lara Howley in CAI's Public Affairs Department at 703-548-8600.

# THE KIPLINGER WASHINGTON LETTER

Circulated weekly to business clients since 1923—Vol. 73, No. 32

THE KIPLINGER WASHINGTON EDITORS

1729 H St., NW, Washington, DC 20006-3938

Prices of small satellite TV dishes will drop to \$199 this fall due to competition from new manufacturers. Sales will also get a boost from an FCC ruling that the dishes can't be banned by homeowner groups.

Note the timing of minimum-wage hikes just approved by Congress. Minimum rises to \$4.75 an hour on Oct. 1 and to \$5.15 on Sept. 1, '97. As originally proposed, the first raise would have taken place on July 1. To avoid a retroactive hike, Congress decided to put it off until Oct.

Comp-time bill probably won't make it. Would allow employers to grant compensatory time off instead of paying employees for overtime. House has passed the bill, but unions will head it off in the Senate.

Tax changes Congress has voted and Clinton will sign into law: Employer-paid tuition for non-job-related courses is tax free up to \$5250 for '95, '96 and for classes under way before July of '97. However, grad-school courses beginning after June '96 aren't eligible.

Larger depreciation deductions for smalls beginning next year. Eventually, they can write off as much as \$25,000 extra the first year.

Research & development credits are reinstated through next May. But any R&D done between July 1, 1995 and June 30, 1996 isn't covered.

Tax credits for hiring the disadvantaged...welfare recipients, high-risk youths, others... for those starting work between Oct. 1, '96 and Sept. 30, '97. Credit is 35% for up to \$6000 of first-year wages, but employment is required to last a minimum of 180 days or 400 hours.

A small, portable heart defibrillator will be OK'd by Food & Drug. Produced by Heartstream, it jump-starts the heart with an electrical jolt. Intended for use by ambulance emergency crews, firefighters and police.

New drugs for migraine headaches will also be cleared by FDA beginning next year: Alniditan from Janssen Pharmaceutica. Maxalt from Merck. Pfizer's Eletriptan. And Bristol-Myers Squibb's BMS-180048. Also Sandoz's Migranal, a nasal spray for those who can't swallow pills.

A number of major labor negotiations will be coming up soon:

Autos in mid-Sept. Main issues will be outsourcing and pay. United Auto Workers will probably target Chrysler to set the pattern. Chrysler talks should go smoothly, but don't rule out a strike at GM.

Steel, this month and next. A contract reopener, so no strike. Arbitrators will probably go along with the 3% raise OK'd at Bethlehem.

Coal in Sept.-Oct. A reopening 3 years into a 5-year contract. Some chance of scattered walkouts...contract doesn't prohibit strikes.

Longshoremen, Sept. 30. Pay and work rules are issues in talks for 65,000 East and Gulf Coast dock workers. Slight chance of a strike.

Teamsters will elect Jimmy Hoffa, Jr. as their president in Nov. The rank & file are sore about settlements with UPS and other big haulers, and the union continues to lose membership. In fact, it's nearly broke.

A Hoffa victory will mean a more militant union, more strikes. Perhaps as early as next year, when the UPS pact comes up for renewal. But unionized trucking firms can't yield much. There's stiff competition from thousands of nonunion haulers eager to take business away from them.

## FEDERAL COMMUNICATIONS COMMISSION

FACT SHEET

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August 1996

Placement of Direct Broadcast Satellite, Multichannel Multipoint Distribution Service,  
and Television Broadcast Antennas

As directed by Congress in the Telecommunications Act of 1996, the Federal Communications Commission has adopted rules concerning restrictions on viewers' ability to receive video programming signals from direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), and television broadcast stations (TVBS).

Receiving video programming from any of these services requires use of an antenna, and the installation, maintenance or use of these antennas may be restricted by local governments or community associations. These restrictions have included such provisions as requirements for permits or prior approval, and requirements that a viewer plant trees around the antenna to screen it from view, as well as absolute bans on all antennas. In passing this new law, Congress believed that local restrictions were preventing viewers from choosing DBS, MMDS, or TVBS because of the additional burdens that the restrictions imposed. To implement this legislation, on August 5, 1996, the Commission adopted a new rule that is intended to eliminate unnecessary restrictions on antenna placement and use while minimizing any interference caused to local governments and associations. This rule will become effective after it is approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act.

The new rule prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. These antennas include DBS satellite dishes that are less than one meter (39") in diameter (larger in Alaska), TV antennas, and antennas used to receive MMDS. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use, (2) unreasonably increase the cost of installation, maintenance or use, or (3) preclude reception of an acceptable quality signal. This rule means that, in most circumstances, viewers will be able to install, use and maintain an antenna on their property if they directly own the property on which the antenna will be located.

The Telecommunications Act and this new rule are designed to promote competition among video programming service providers, enhance consumer choice, and assure wide access to communications. The rule allows local governments and homeowners' associations to enforce restrictions that do not impair reception of these signals as well as restrictions needed for safety or historic preservation. The rule balances these public concerns with an individual's desire to receive video programming. The Commission has asked for further comment on whether additional rules should apply to situations where a viewer wants to install an antenna on property owned by a landlord or on common property controlled by a condominium or homeowners' association.

This fact sheet provides general answers to questions that may arise about the implementation of the rule. For further information, call the Federal Communications Commission at (202) 418-0163.

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Q: What types of restrictions are prohibited?

A: The rule prohibits restrictions that impair a viewer's ability to receive signals from a provider of DBS, MMDS or TVBS. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules or similar restrictions on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property. A restriction impairs if it: 1) unreasonably delays or prevents use of, 2) unreasonably increases the cost of, or 3) precludes a subscriber from receiving an acceptable quality signal from, one of these antennas. The rule does not prohibit safety restrictions or restrictions designed to preserve historic districts.

Q: What types of restrictions unreasonably delay or prevent subscribers from receiving a signal?

A: A local restriction that prohibits all antennas would prevent subscribers from receiving signals, and is prohibited by the Commission's rule. Procedural requirements can also impair the ability to receive service. Thus, local regulations that require a person to obtain a permit or approval prior to receiving service will delay reception; this is generally allowed only if it is necessary to serve a safety or historic preservation purpose.

Q: What is an unreasonable additional cost to install, maintain or use an antenna?

A: Any requirement to pay a fee to the local authority in order to be allowed to install an antenna would be unreasonable, unless it is a permit fee that is needed to serve safety or historic preservation or a permit is required in the case of installation on a mast greater than 12 feet. Things to consider in determining the reasonableness of any costs imposed include: the cost of the equipment and services, whether there are similar requirements for other similar installations like air conditioning units or trash receptacles, and what visual impact the antenna has on the surroundings. Restrictions cannot require that relatively unobtrusive DBS antennas be screened by expensive landscaping. A requirement to paint an antenna in a fashion that will not interfere with reception so that it blends into the background against which it is mounted would likely be acceptable. In general, the costs imposed by local regulations cannot be unreasonable in light of the cost of the equipment or services and the visual impact of the antenna.

Q: What restrictions prevent a subscriber from receiving an acceptable quality signal?

A: A requirement that an antenna be placed in a position where reception would be impossible or would be substantially degraded would conflict with the rule. However, a regulation requiring that antennas be placed to the extent feasible in locations that are not visible from the street would be permitted, if this placement would still permit reception of an acceptable quality signal.

Q: Are all restrictions prohibited?

A: No, many restrictions are still valid. Safety restrictions are permitted even if they impair reception, because local governments bear primary responsibility for protecting public safety. Examples of valid

safety restrictions include fire codes preventing people from installing antennas on fire escapes, restrictions requiring that a person not place an antenna within a certain distance from a power line, electrical code requirements to properly ground the antenna, and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person wanting to install an antenna knows what restrictions apply. The restriction cannot impose a more burdensome requirement than is needed to ensure safety.

Restrictions in historic areas may also be valid. Because certain areas are considered uniquely historical and strive to maintain the historical nature of their community, these areas are excepted from the rule. To qualify as an exempt area the area must be listed or eligible for listing in the National Register of Historic Places. In addition, the area cannot restrict antennas if such a restriction would not be applied to the extent practicable in a non-discriminatory manner to other modern structures that are comparable in size, weight and appearance and to which local regulation would normally apply. Valid historical areas cannot impose a more burdensome requirement than is needed to ensure the historic preservation goal.

Q: Whose restrictions are prohibited?

A: Restrictions are prohibited in state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules or similar restrictions relating to what people can do on land within their exclusive use or control where they have a direct or indirect ownership interest in the property.

Q: If I live in a condominium where the land and the roof are commonly owned, or in an apartment building where the landlord owns the land and the roof, does this rule apply to me?

A: A *Further Notice of Proposed Rulemaking* has been adopted by the Commission, to obtain comments from interested persons about whether rules should apply in these situations. The Commission will use those comments to reach a decision on this question.

Q: What types of antennas are covered?

1. A "dish" antenna that is one meter (39") or less in diameter or is located in Alaska and is designed to receive direct broadcast satellite service, including direct-to-home satellite service.
2. An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable). Such antennas may be mounted on "masts" to reach the height needed to establish line-of-sight contact with the transmitter. Masts higher than 12 feet may be subject to local permitting requirements.
3. An antenna that is designed to receive television broadcast signals. Masts higher than 12 feet may be subject to local permitting requirements.

Q: What can a local government, association, or consumer do if there is a dispute over whether a

particular restriction is valid?

A: If the local authority defines the restriction as safety-related it is valid, unless a court or the Commission determines that it is not safety-related or is not the least burdensome way to ensure the safety goal. If a local government or association has "highly specialized or unusual" concerns about antenna installation, maintenance or use, it may apply to the Commission for a waiver of the rule, to have its restriction declared valid. Interested parties may petition the Commission or a court of competent jurisdiction for a ruling to determine whether a particular restriction is permitted or prohibited under this rule.

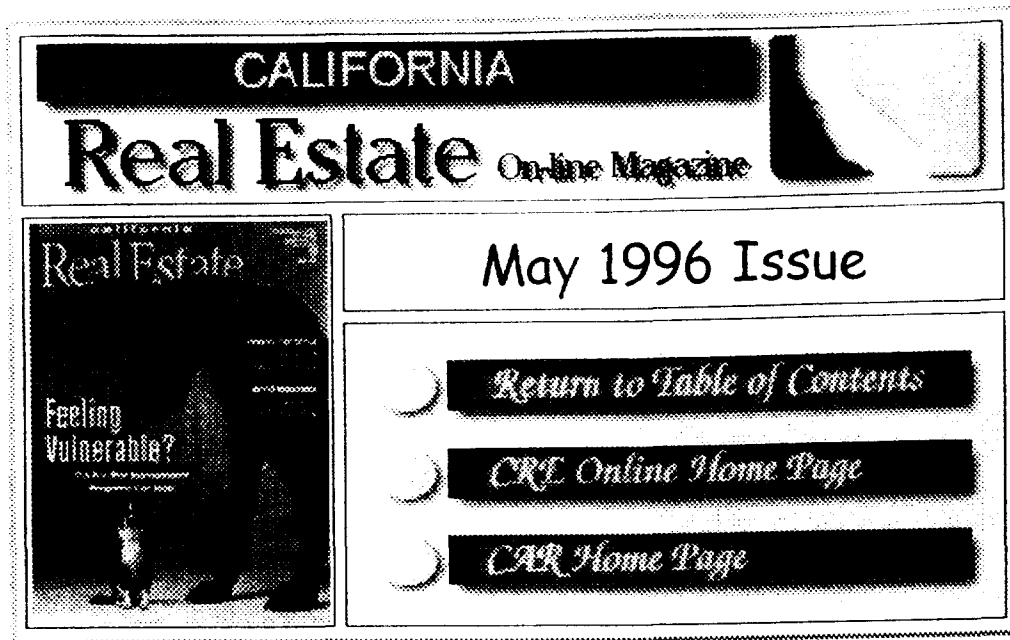
Q: Who is responsible for showing that a restriction is enforceable?

A: When a conflict arises about whether a restriction is valid, the government or association trying to enforce the restriction will be responsible for proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the local government or association to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

Q: Who do I call if my town or neighborhood association is enforcing an invalid restriction?

A: Call the Federal Communications Commission at (202) 418-0163. Some assistance may also be available from the direct broadcast satellite company, multichannel multipoint distribution service or television broadcast station whose service is desired.

- FCC -



## Legal

### Homeowners' Associations Can't Ban Satellite Dishes

Your client loves his new home, but the homeowners' association refuses to allow him to install his "unsightly" satellite dish. If that conflict sounds familiar, you'll be happy to learn the California Legislature has cleared a path for new technology. Effective Jan. 1, 1996, section 1376 of the Civil Code provides that any prohibition against or restriction on the installation or use of video or television antennas measuring 36 inches or less (including satellite dishes) within a common interest development is void and unenforceable.

The new law does allow associations to impose "reasonable restrictions" on the installation and use of video or television antennas, but such restrictions cannot significantly increase the cost of the video or television system, nor can they serve to decrease significantly the system's efficiency or performance. For example, an association can require owners to submit an application and give notice to the association before installing a system; obtain approval from the association for an installation on another owner's separate property; provide for repair or replacement of roofs or other building components affected by the installation; and reimburse or indemnify the association for any loss or damage due to the installation, maintenance or use of the antenna.

If an association willfully delays approval of a system installation, the statute authorizes an award of reasonable attorney's fees to any prevailing party seeking to enforce compliance with the law.

### State Supreme Court Rules On Business Interference

Suppose you lost a prospective client due to the meddlesome actions of a third party. Could you establish a claim for interference with prospective economic advantage? The California Supreme Court tackled this issue when it decided the case of *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* Although this case didn't involve real estate brokers, the court's holding extends to all economic interference claims.

## FCC RELEASES REGULATIONS FOR SMALL SATELLITE DISHES

### Some Restrictions Allowed for Aesthetic Purposes

The Federal Communications Commission (FCC) released rules on August 6, 1996 regarding the preemption of community or homeowner association restrictions on satellite dishes less than one meter in diameter, off-the-air television antennas, and multipoint distribution service (MDS) antennas less than one meter in diameter. The rule will not be effective for at least 30 days.

The rules apply only to an individual who owns or has exclusive use of the area in which he or she wants to install one or more antennas. Under the guidelines, association restrictions which prevent, unreasonably delay, unreasonably increase the cost of antenna installation, maintenance or use, or preclude reception of an acceptable quality signal will no longer be enforceable.

However, "reasonable" architectural guidelines or policies which do not impair signal reception will continue to be enforceable. Examples of permissible restrictions include:

- mandatory painting or screening of antennas; and
- requiring the minimal visual intrusion possible.

These guidelines would seem to permit a prompt application procedure, and still allow HOA's to require that antennas be placed in a backyard or to not be visible from the front.

In addition to these guidelines, masts to which MDS antennas are to be attached may be prohibited if more than 12 feet above the roofline. Restrictions designed to implement a clearly defined safety objective, or maintain the nature of a historic district, are exempt from the rules. In exceptional circumstances, an association may petition for a waiver of this rule.

But the FCC deferred any decision on restricting individual installation of antennas on common property, or a renter's right to install an antenna in a condominium. The FCC has asked for additional comments and information concerning these issues, as well as a suggestion that associations could decide to install central antennas to serve those individuals wanting telecommunications services.

The Community Associations Institute (CAI) was very instrumental in obtaining these concessions from the FCC, allowing associations to maintain some control over location, means, and method of antenna installation while ensuring homeowner access to advanced telecommunications services. CAI volunteers and staff provided written comments to the FCC on both proposed rules, held numerous meeting with congressional and FCC senior staff, met and discussed the issues with the FCC staff writing this rule, and responded to countless inquiries from members. Due to intense efforts by many CAI members, the final rule incorporated many of CAI's suggestions. A copy of the entire FCC rule, including the report and order, may be obtained from the FCC home page at <http://www.fcc.gov>.

*Please email [rck@hmsco.com](mailto:rck@hmsco.com) with any questions or comments about this article. We would like to hear from you.*

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## FCC Proposes Rule Prohibiting Some Satellite Dish Restrictions

Reprinted from *COMMUNITY MANAGEMENT*, Vol. 4, No. 3, May/June 1996.

The Federal Communications Commission (FCC) proposed a rule on March 11 that would prohibit community associations from restricting satellite dishes smaller than one meter in diameter -- even if their CCR's contain such restrictions.

The rule states that, "no restrictive covenant, encumbrance, home-owners' rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video programming services over a satellite antenna less than one meter in diameter."

This is the first proposed rule issued since the enactment of the Telecommunications Act of 1996 earlier this year. The Act -- a broad overhaul of telecommunications laws -- is intended to remove barriers to telecommunications services.

Section 207 of Title II of the law directs the FCC "to promulgate rules prohibiting restrictions which inhibit a viewer's ability to receive video programming from over-the-air broadcast stations or direct broadcast satellite services." The law, signed by President Clinton on February 8, requires the FCC to promulgate these rules within 180 days of the bill's enactment.

Because of this 180-day period, community associations should delay amending any existing policies regarding satellite dishes.

### Taking A Stand

Since the new law is intended to improve homeowners' access to telecommunications services, the Community Associations Institute (CAI) encourages associations to view the Act as advancing technology rather than hindering enforcement procedures.

CAI representatives met with FCC officials in March to discuss how the proposed satellite dish rule would affect community associations. The Institute is asking the FCC to consider community associations' special circumstances and the difficulties they would have complying with the proposed rule.

Last month, CAI filed written comments describing how the proposed satellite dish rule would affect community association common areas, property values, and health and safety standards.

The FCC also plans to issue an antenna rule, which could be similar to the proposed satellite dish rule. Members are encouraged to submit comments on the rule's provisions when it is released.

### Large Satellite Dishes

Although it is difficult to predict the outcome of the FCC's final rules, there is a chance that they may not affect community associations' CC&R's regulating C-band satellite dishes, said Peter Dunbar, an attorney in Tallahassee, Florida. C-band satellite dishes range from 6 feet to 12 feet in diameter.

However, community associations that do not distinguish between the various sizes of satellite dishes in their CC&R's could have problems restricting C-band satellite dishes when the FCC's rules become

effective, Dunbar said.

By amending the CC&R's and clearly distinguishing between the direct broadcast and C-band satellite dishes, an association's board of directors would be able to prohibit the larger satellite dishes without being accused of selective enforcement.

For more information about the Telecommunications Act of 1996, call CAI's Public Affairs Department at (703) 548-8600.

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## Update on FCC and Satellite Dishes

*September, 1996.* To get the latest information on this subject, point your browser to our link [Update of FCC Satellite Dishes Guidelines](#)

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*The article is reprinted as a public service to all those with interests in homeowners and common interest realty associations.*

*Please [email rck@hmsco.com](mailto:rck@hmsco.com) with any questions or comments about this article. We would like to hear from you.*

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## FCC ADOPTS SATELLITE AND ANTENNA RULE

On August 6, the FCC released a rule regarding the preemption of community association restrictions on satellite antennas less than one meter in diameter, off-the-air television antennas, and multipoint distribution service (MDS) antennas less than one meter. This rule applies only to an individual who owns or has exclusive use of the area in which he or she wants to install one or more antennas. Under this rule, association restrictions which prevent, unreasonably delay, unreasonably increase the cost of antenna installation, maintenance or use, or preclude reception of an acceptable quality signal will no longer be enforceable. However, reasonable architectural guidelines which do not impair signal reception will continue to be enforceable. Examples of permissible restrictions include: mandatory painting or screening of antennas and requiring the minimal visual intrusion possible. The rule appears to permit a prompt application process.

In addition, masts to which MDS antennas are to be attached may be prohibited if more than 12 feet above the roofline. Restrictions designed to implement a clearly defined safety objective or maintain the nature of a historic district are exempt from the rule. In exceptional circumstances, an association may petition for a waiver of this rule.

The FCC deferred any decision on restricting individual installation of antennas on common property. Instead, the FCC has asked for additional comments and information concerning these issues, as well as CAI's suggestion that associations could decide to install central antennas to serve those individuals wanting telecommunications services.

CAI has been actively involved in ensuring that these new rules allow associations to maintain some control over location, means, and method of antenna installation while ensuring homeowner access to advanced telecommunications services. CAI volunteers and staff provided written Comments and Reply Comments to the FCC on both proposed rules, held numerous meetings with congressional and FCC senior staff, met and discussed the issues with the FCC staff writing this rule, and responded to countless inquiries from members. CAI supported the public policy goal of making communications services available to all Americans, while simultaneously fighting to preserve the rights of homeowner associations to control location, means and method of antenna installations. Due to intense efforts by many CAI members, the final rule incorporated many of CAI's suggestions.

The rule will not be effective for at least 30 days. In the meantime, please help CAI inform community associations and other interested parties of this new rule. CAI will be working with the FCC in a collaborative effort to provide timely information to its members on effective implementation of this rule.

[Click here to obtain the FCC's Rule and the entire Order.](#) The three page Rule is available on CAI's Faxback system. Call 703-836-6904 and request document 530.